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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,423	02/28/2002	Mike Velten	11564.0048.NPUS01	3204

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LOCKE LIDDELL & SAPP LLP  
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600 TRAVIS #3400  
HOUSTON, TX 77002

EXAMINER
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WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/085,423	VELTEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stephan F Willett	2142	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/20/02</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim(s) 2 is/are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Apparatus with the monitoring computer" is unclear since the apparatus is not with the monitoring computer.

***Claim Rejections - 35 USC 102***

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 6, 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Baran et al. with Patent Number 5,406,269.
3. Regarding claim(s) 1, Baran teaches a network monitoring system of the computer peripherals. Baran teaches configuring a subordinate program by a monitoring program on a monitoring computer, col. 1, lines 34-40, col. 3, lines 38-40. Baran teaches installing the sub-program from the monitoring computer to a target program, col. 3, lines 42-45.

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4. Regarding claim(s) 2, Baran teaches receiving a message from the apparatus, col. 3, lines 50-51.

5. Regarding claim(s) 6, 9, Baran teaches pushing the sub-program to the target computer via the network, col. 3, lines 43-44.

***Claim Rejections - 35 USC 103***

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-5, 7-8, 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baran et al. with Patent Number 5,406,269 in view of Miller et al. with Patent Number 5,930,736.

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6. Regarding claim(s) 3-5, 10, 14, 18, Baran teaches a network monitoring system of the computer peripherals. Baran teaches configuring a sub-program by a monitoring program on a monitoring computer, col. 1, lines 34-40, col. 3, lines 38-40. Baran teaches installing the sub-program from the monitoring computer to a target program, col. 3, lines 42-45. Baran teaches a routine determining an alarm condition, col. 4, lines 19-20. Baran teaches determining a target computer, col. 3, line 55 effected and sending an instruction, col. 4, lines 22-25. Baran teaches the invention in the above claim(s) except for explicitly teaching determining and transmitting a shutdown condition and shutdown instruction. In that Baran operates to generate service errors, the artisan would have looked to the monitoring arts for details of implementing specific errors. In that art, Miller, a related network monitor, teaches "the processor may monitor the I/O signals for other purposes", col. 6, lines 65-66 in order to provide other services. Miller specifically teaches "the processor may shut down an additional power supply .. or the entire computer itself", col. 7, lines 3-4. Further, Miller suggests "if it detects or fails to detect", col. 7, line 6 will result from implementing his monitoring. The motivation to incorporate a shutdown event insures that a proper response is made. Thus, it would have been obvious to one of ordinary skill in the art to incorporate the shutdown event as taught in Miller into the monitor described in the Baran patent because Baran operates with various events and Miller suggests that optimization can be obtained with shutdown events. Therefore, by the above rational, the above claim(s) are rejected.

7. Regarding claim 7-8, the Baran and Miller patents discloses the method of the preceding claims. The Baran and Miller patents do not explicitly disclose installing the program from a floppy disk or by e-mail. However, Official Notice is taken MPEP 2144.03 (a)) that installing

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the program from a floppy disk or by e-mail is well known in the art to insure flexibility. It would have been obvious to one of ordinary skill in the art at the time of the application's invention to install the program from a floppy disk or by e-mail to obtain the advantages of communicating with compatible devices. By the above rational, the claim is rejected.

8. Regarding claim 11-12, 16-17, 20, the Baran and Miller patents discloses the method of the preceding claims. The Baran and Miller patents do not explicitly disclose application to an uninterruptible power supply, smoke or burglar alarms, fire or water or access detectors. However, Official Notice is taken MPEP 2144.03 (a)) that application to an uninterruptible power supply, smoke or burglar alarms, fire or water or access detectors is well known in the art to insure flexibility, see Bassman et al. with Patent Number 6,408,334. It would have been obvious to one of ordinary skill in the art at the time of the application's invention to apply the program to an uninterruptible power supply, smoke or burglar alarms, fire or water or access detectors to obtain the advantages of communicating with various devices. By the above rational, the claim is rejected.

9. Regarding claim(s) 13, 15, 19, Baran teaches pushing the sub-program to the target computer via the network, col. 3, lines 43-44.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the references is suggested. A close review of the Muehsam reference with Patent Number 6,608,400 is suggested. The other references cited teach numerous other ways to detect low voltage in

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batteries in a network, thus a close review of them is suggested.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey, can be reached on (571) 272-3896. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

7. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

A handwritten signature in black ink, appearing to read 'Stephan Willett', with a stylized, cursive script.

Stephan Willett

Patent Examiner

April 28, 2005